

MARY JANE SHERMAN

AUGUST 20 (legislative day, AUGUST 1), 1951.—Ordered to be printed

Mr. McCARRAN, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 2276]

The Committee on the Judiciary, to which was referred the bill (H. R. 2276) for the relief of Mary Jane Sherman, having considered the same, reports favorably thereon, with an amendment, and recommends that the bill, as amended, do pass.

AMENDMENT

In line 6, page 1, strike out the figure "\$3,041.31" and insert in lieu thereof the figure "\$3,014.31".

PURPOSE OF AMENDMENT

To correct an error which appeared in the bill as passed by the House.

PURPOSE

The purpose of the bill, as amended, is to pay the sum of \$3,014.31 to Mary Jane Sherman, Northbrook, Ill., in full settlement of all claims against the United States for personal injuries, medical and hospital expenses, sustained as a result of a collision on May 18, 1943, involving the automobile claimant was driving, a tractor-trailer owned by the Kool-Rite Sales Co., Chicago, Ill., and a United States Army truck, at the intersection of Waukegan Road and Shermer Avenue in Northbrook, Ill.

STATEMENT

An identical bill was passed by the House during the Eighty-first Congress but was postponed indefinitely by this committee. A similar bill passed both houses during the Eightieth Congress but was vetoed by the President by pocket veto.

All of the pertinent details regarding the accident in question and the results therefrom, including reports of medical examinations and statements by physicians, are contained in House Report 1737 (81st Cong., 2d sess.) which is incorporated herein by reference.

Previous unfavorable action on this claim was based on two controversial points (posed in the form of questions) both of which were resolved against the claimant, which action, we believe, was somewhat contrary to the evidence presented for the record. First, Was the Army driver's negligence the proximate cause of the accident? Second, Was Mrs. Sherman's subsequent disability attributable to the injuries she sustained in the accident?

In dealing with the first question, the committee feels that the correct answer should be in the affirmative. The record contains the affidavits of three witnesses which state that the Army driver was in the act of making a right turn from a left lane when the accident occurred. The position of the trucks immediately following the collision supports those statements as does the description of damage to the two vehicles. The Army driver, in his statement, failed to say what lane he was traveling in but did say that he gave a signal for a right turn. Accepting the fact that he did give such a signal, it seems improbable that the driver of the Kool-Rite Sales Co. truck would be able to see that signal if the Army truck was in fact in the left lane and the other truck in the right lane. The Kool-Rite truck driver stated by affidavit that he observed the Army truck move from the right lane to the left lane as if to make a left turn. If he had reason to believe that the Army truck was making a left turn or if the Army truck was in fact making a left turn, then the Kool-Rite driver would not have been in violation for passing in an intersection. The Uniform Act Regulating Traffic on Highways in the State of Illinois, article VIII, section 62 (A), provides:

Turning at intersections.—The driver of a vehicle intending to turn at an intersection shall do as follows: Both the approach for a right turn and a right turn shall be made as close as practical to the right-hand curb or edge of the roadway.

The only damage done to the Army truck was on the right side thereof—the rear mudguard in the front of the rear wheels and the front fender were bent. That indicates that there was considerable space between the Army truck and the right curb or edge of the roadway because there is no evidence that the Kool-Rite truck mounted the curb north of the intersection. If the Army driver had been traveling in the right lane as required by law in making a right turn it is apparent that the Kool-Rite truck would have rammed into the rear of the Army truck rather than strike it on the right side. There is no evidence to indicate that either driver was traveling at an excessive rate of speed. It appears conclusive from the foregoing that the negligence of the Army driver was the proximate cause of the accident. The car being operated by claimant was at a standstill on the intersecting street waiting for the traffic light to change when the accident occurred.

Second, it is inconceivable that anyone, even of the medical profession, could state categorically that claimants present condition is not attributable to the injuries she received in this accident. The record contains conflicting testimony on that point. The family physician has stated by affidavit that claimant, prior to this accident,

had enjoyed excellent health and that he had never had occasion to treat her for any illness. He stated further that after consulting with other specialists who had examined Mrs. Sherman it was his opinion that she had suffered a slight stroke during the course of the accident. In considering all of the medical evidence of record before this committee, which evidence clearly establishes that claimant's physical condition has steadily declined since this accident, it seems reasonable to deduce that her present disabilities are, at least in a substantial degree, attributable to the accident which occurred on May 18, 1943.

A compilation of claimant's medical expenses through 1945 and cost of repairs to the automobile she was operating when the accident occurred indicates an expenditure of \$6,143.45. The medical expenses, according to information subsequently furnished, have progressively increased since 1945 and claimant is presently bed-ridden requiring the daily attendance of a nurse. It appears that there is no hope for improvement.

Claimant has no rights under the Federal Tort Claims Act, nor did she ever have such rights.

The committee is cognizant of the fact that in recommending favorable consideration of this bill, it is reversing previous actions taken on this matter. However, a preponderance of the evidence seems to justify such action and it is sincerely hoped that the committee's recommendation will be accepted to conclusion and enactment of this bill.



